

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

Lizamaris Delarosa,

Plaintiff,

-v-

1:11-CV-368 (NAM/CFH)

United States of America, AUSA Craig Nolan,  
ATF S/A Thomas M. Jusaniec, and T.F.O.  
Thomas McCoy,

Defendants.

APPEARANCES:

Lizamaris Delarosa  
Plaintiff, *pro se*

Hon. Richard S. Hartunian, United States Attorney  
Charles E. Roberts, Esq., Assistant United States Attorney  
100 South Clinton Street  
Syracuse, New York 13261  
Attorney for Defendants

Hon. Norman A. Mordue, U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

The Government moves (Dkt. No. 31) for reconsideration of so much of the Memorandum-Decision and Order (Dkt. No. 29) as denied the Government's motion (Dkt. No. 28) to dismiss the amended complaint for failure to exhaust administrative remedies.

Reconsideration is denied

The Government's reconsideration motion (Dkt. No. 31) also seeks, in the alternative, summary judgment dismissing the action for failure to exhaust administrative remedies. In its reply papers (Dkt. No. 36), the Government submits the declaration of Gregory D. Plott in support of summary judgment. Plainly, plaintiff has not had the opportunity to respond to this

declaration. Accordingly, the Court denies the Government's summary judgment motion without prejudice. The Government may, if it so desires, make a summary judgment motion limited to the exhaustion question prior to the completion of discovery. Such a motion will not prejudice the Government's right to make a subsequent summary judgment motion on other grounds after discovery, in the event that the Court denies summary judgment on the ground of failure to exhaust.

The letter motion (Dkt. No. 33) is granted and the Court accepts the Government's amended Memorandum of Law.

It is therefore

ORDERED that the motion (Dkt. No. 33) is granted; and it is further

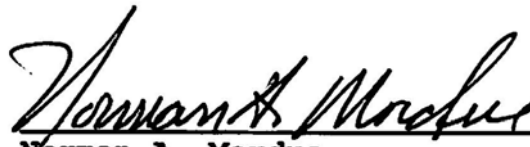
ORDERED that the motion (Dkt. No. 31) is denied with prejudice insofar as it seeks reconsideration, and denied without prejudice insofar as it seeks summary judgment; and it is further

ORDERED that the Government may make a summary judgment motion limited to the question of exhaustion of administrative remedies in accordance with this decision; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

Date: August 26, 2013  
Syracuse, New York

  
**Norman A. Mordue**  
**Senior U.S. District Judge**